

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

ALBERT GRAY, Administrator, et al	:	
	:	
VS.	:	C.A. No. 04-312L
	:	
JEFFREY DERDERIAN, et al	:	
	:	
ESTATE OF JUDE B. HENAULT, et al	:	
	:	
VS.	:	C.A. No. 03-483L
	:	
AMERICAN FOAM CORP., et al	:	

JBL, INCORPORATED f/k/a JAMES B. LANSING SOUND,  
INCORPORATED d/b/a JBL PROFESSIONAL'S MOTION TO APPROVE  
SETTLEMENT PURSUANT TO R.I. GEN. LAW. §§ 10-6-7; 10-6-8

Defendant, JBL, Incorporated f/k/a James B. Lansing Sound, Incorporated d/b/a JBL Professional (hereinafter "JBL") moves this Court for an Order approving JBL's gross settlement with the plaintiffs in the amount of \$815,000 (Eight Hundred Fifteen Thousand Dollars) as a "good faith settlement" in accordance with R.I. Gen. Law §§ 10-6-7; 10-6-8 so as to extinguish all potential contribution claims by tortfeasors.

JBL requests that the Order approving the gross settlement be without prejudice to their ability to address the Court's review of the individual settlements allotted to the minor plaintiffs under Special Master McGovern's Plan of Distribution and/or appointment of Guardians Ad Litem and/or a Special Master in connection therewith.

JBL respectfully requests the Court take notice that Court approval of this Motion is one of a number of conditions precedent which must be satisfied before there is a final binding settlement.

In support of its Motion, JBL submits the accompanying Memorandum of Law and Affidavit of C. Russell Bengtson, the contents of which are incorporated by reference in this Motion.

JBL, INCORPORATED f/k/a JAMES B.  
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d/b/a JBL PROFESSIONAL  
By its Attorneys,  
CARROLL, KELLY & MURPHY

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CERTIFICATION

I hereby certify that on April 30, 2009 a true copy of the within document was filed electronically and is available for viewing and downloading from the ECF system and that the counsel of record listed below will receive notice through the ECF system.

/s/ C. Russell Bengtson\_\_\_\_\_

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MEMORANDUM IN SUPPORT OF  
JBL, INCORPORATED f/k/a JAMES B. LANSING SOUND,  
INCORPORATED d/b/a JBL PROFESSIONAL'S MOTION TO APPROVE  
SETTLEMENT PURSUANT TO R.I. GEN. LAW. §§ 10-6-7; 10-6-8

In support of their Motion to Approve Settlement pursuant to R.I. Gen. Law §§ 10-6-7, 10-6-8, JBL, Incorporated f/k/a James B. Lansing Sound, Incorporated d/b/a JBL Professional ("JBL") states as follows:

**I. INTRODUCTION**

JBL has reached an agreement in principal to settle for the amount of \$815,000 (Eight Hundred Fifteen Thousand Dollars) with all plaintiffs in these actions. These cases arise from a single-occurrence involving twenty-five or more deaths. Accordingly, Rhode Island's Contribution Among Joint Tortfeasors Act provides that only "a judicially approved good faith settlement" will extinguish any non-settling defendants' rights to contribution against JBL. Because the settlement agreement between plaintiffs and JBL was the result of a full and fair arms-length negotiations constitutes a "good faith settlement" under Rhode Island law, the Court should issue an Order approving the settlement.

**II. ARGUMENT**

**A. Rhode Island Law Provides a Judicially Approved Good-Faith Settlement to Protect a Settling Joint Tortfeasor From Contribution Claims by Non-Settling Tortfeasors.**

In 2006 the Rhode Island Legislature amended sections of the Contribution Among Joint Tortfeasors Act to recognize and encourage settlements in single-occurrence mass tort cases involving twenty-five or more deaths. See P.L. 2006, ch. 213, sec. 2. Specifically the Act was amended to provide that “a release by the injured person[s] of one joint tortfeasor given as part of a judicially approved good-faith settlement,” will protect the alleged joint tortfeasor from potential subsequent liability. See R.I. Gen. §§ 10-6-7, 10-6-8.

The amendments require judicial approval and specifically a finding of “good faith” for the protections of the Act to apply. JBL moves to approve this settlement and to make the requisite finding of good faith.

**B. A Settlement is Made in “Good Faith” When it Results From An Arm’s Length Negotiation and Non-Collusion**

“Good Faith” insofar as it is used in R.I. Gen. Law §§ 10-6-7, 10-6-8 has not been defined. In Tomaino v. Concord Oil of Newport, Inc., 709 A.2d 1016 (R.I. 1998), the court defined good faith as a “full and honest disclosure by [a] fiduciary of all material facts to allow for a disinterested decision maker to exercise its informed judgment.” Tomaino at 1021.

In the context of an insurer and an insured the court in Skaling v. Aetna Ins. Co., 799 A.2d 997 (R.I. 2002) held that “[o]ne of the tests of insurer good faith is whether the insurer was reasonable in both its investigation of the claim and its settlement behavior.” Skaling at 1012-1013.

In Skaling the court also noted that “[i]t is the policy of [Rhode Island] to encourage the settlement of controversies in lieu of litigation.” Skaling at 1012. In light of the aforementioned policy it is clear that “good faith” simply means that the parties deal at arm’s length and without

bad faith. The settlement between the plaintiffs and JBL was the result of an arm's length negotiation.

**C. The Settlement In Principle Between JBL and the Plaintiffs was reached in Good Faith**

The settlement agreement between JBL and the plaintiffs was the result of a series of negotiations between counsel for JBL and the plaintiffs.

JBL filed a Motion for Summary Judgment on April 9, 2007 raising several grounds for the dismissal of the plaintiffs' claims.

Settlement negotiations began on or about September 18, 2007 and concluded on or about February 22, 2008. At all times the settlement negotiations were forthright and candid, the result of arm's length bargaining and involved neither collusive conduct nor any intent to injure any non-settling parties nor anyone else.

Accordingly the settlement between JBL and the plaintiffs is a "good faith" settlement under Rhode Island Law.

WHEREFORE, for the foregoing reasons, JBL respectfully requests the Court issue an Order approving the settlement as contemplated by R.I. Gen. Law §§ 10-6-7, 10-6-8 and thereby extinguish, with prejudice, any potential contribution claims of the remaining defendants.

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CERTIFICATION

I hereby certify that on April 30, 2009 a true copy of the within document was filed electronically and is available for viewing and downloading from the ECF system and that the counsel of record listed below will receive notice through the ECF system.

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